HIGH COURT OF UTTARAHCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 307(S/S) of 2003

Surendar Singh Khadayat

Vs

State of U.P. & others.

Approved for reporting.

Not approved for reporting

Date of decision 16/02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 307 (SS) OF 2003

Surendar Singh Khadayat,
S/o late Mohan Singh Khadayat,
R/o Village and Post Guyeeyan (Baluwakote),
Dharchula, District Pithoragarh. .....Petitioner.

Versus

1. State of U.P., through the Secretary Home, U.P. Lucknow.
2. Superintendent of Police Establishment U.P. Moradabad, U.P., Allahabad.
3. Company Commander 9th Battalion P.A.C., Moradabad, U.P. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Vipin Mohan Pingal, learned counsel for the petitioner and learned Standing Counsel for the State of U.P.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 31.07.2002 (Annexure No. 6 to the writ petition) passed by the respondent no.2.

Brief facts giving rise to the present writ petition are that the father of the petitioner was posted as Constable G.P. 138 Mohan Singh, since he died during his service period on 22.08.1985.

At the time of death of the father of petitioner Sri Mohan Singh was posted in Special Police force and the border of U.P. Tibbat Seema in 9th Battalion P.A.C. Moradabad, while he was posted at border region in Kalapani at the high top 18000 fit

and while taken him to the hospital after the treatment he expired,

The mother of the petitioner Smt. Janki Devi made several representations for appointment but no action was taken by the authorities concerned.

The petitioner made further representation before the respondents for the appointment under the dying in harness rules on 21.02.2000 and the representation of the petitioner was duly forwarded by the Company Commander of 9th Battalion P.A.C. Moradabad U.P. on 03.07.2000 and the petitioner was asked to complete certain formalities, which were completed within a stipulated period.

Thereafter, the papers of the petitioners were forwarded for the appointment under the dying in harness rules by the Deputy Inspector General of Police P.A.C. Moradabad Division vide his letter No. 155/2000 dated 08.02.2001.

However, the claim of the petitioner was rejected on the ground that the petitioner died due to illness. According to the learned counsel for the petitioner, the ground taken by the respondent cannot be a ground for rejecting the application for appointment under dying in harness rules.

The whole object of giving compassionate appointment is to enable the family to tied over the sudden crisis as laid down in Umesh Kumar Nagpal Vs. ***Vs. State of Haryana (1994) 4 SCC 138.*** Relevant observations are quoted below:-

"For these very reason, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be

claimed and offered whatever the lapse of time and after the crisis is over."

In ***Smt Sushma Gosain v. Union of India (1989) 4 SCC 468,*** it was observed that in all claims of appointment on compassionate grounds, there should not be anydelay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointment should, therefore, be provided immediately to redeem the family distress.

Learned counsel for the petitioner has referred **Sima Devi V. Senior Superintendent of Police (H.C.) [2002(2) ESC (All)]**, where it has been held as under:-

"In my consideration this is not the correct understanding of provision and spirit of the 'Rule 1974'. The benefit of giving appointment on compassionate ground has to be extended to the dependent of a person who died in service and the same is to be given to a person who is legally entitled for such benefit. The nature, manner and cause of death may be many, such death, might occur in natural course, accidental, murder, natural calamities, during war, anti-terrorist activities etc. as the manner the death likely to occur in service has not been specified in the 'Rule 1974' therefore, the death caused by every possible manner could be conceived of and has to be considered for the purpose of extending benefit for giving employment to the dependent of person died in service interference to 'Rule 1974'."

Consequently a writ of certiorari is issued quashing the order dated 31st July, 2002 passed by the Deputy Superintendent of Police (Establishment) Niyukti Police Adhikshak, Uttar Pradesh.

The respondent no. 2 is directed to consider the appointment of the petitioner under Dying in Harness Rules within a period of two months from the filing of the certified copy of the order.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

16.02.2006.

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